

4 Pages
JASON E. RIOS, State Bar No. 190086
FELDERSTEIN FITZGERALD
WILLOUGHBY & PASCUZZI LLP
400 Capitol Mall, Suite 1750
Sacramento, CA 95814
Telephone: (916) 329-7400
Facsimile: (916) 329-7435
e-mail: jrios@ffwplaw.com

DARRELL W. CLARK, ESQ.
(*pro hac vice* to be filed)
STINSON LEONARD STREET LLP
1775 Pennsylvania Ave., NW, Suite 800
Washington, DC 20006
Telephone: (202) 785-9100
Facsimile: (202) 785-9163
e-mail: darrell.clark@stinson.com

Attorneys for Cerner Corporation and
Cerner Health Services, Inc.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE
REGIONAL
MEDICAL CENTER,

Debtor.

Case No. 17-13797-B-9

DC No.: FWP-1

Chapter 9

Date: February 14, 2019
Time: 9:30 a.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13

Judge: Hon. René Lastreto II

**DECLARATION OF SARA MEINHARD IN SUPPORT OF REQUEST FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM OF
CERNER CORPORATION AND CERNER HEALTH SERVICES, INC.**

1 THE UNDERSIGNED, Sara Meinhard, Assistant Secretary of Cerner Corporation, and
2 Assistant Secretary of Cerner Health Services, Inc., states as follows:

3 1. I am a United States citizen over the age of 18 and competent to testify to the
4 matters stated below.

5 2. I have personal knowledge of the facts and matters as set forth herein.

6 3. I am an Assistant Secretary for Cerner Corporation ("Cerner Corp."). I am an
7 Assistant Secretary for Cerner Health Services, Inc. ("Cerner HS", and collectively with Cerner
8 Corp., "Cerner").
9

10 4. I am personally familiar with Cerner's record keeping practices. Cerner's records are
11 made and kept by a reliable system in the ordinary course of regularly-conducted business
12 activity at or near the time of the activity that gives rise to such reports by persons with
13 knowledge of the information being recorded ("Cerner's Records"). It is based on a review of
14 Cerner's Records that I make this testimony.
15

16 5. On or about September 30, 2009, Tulare Local Healthcare District d/b/a Tulare
17 Regional Medical Center ("Debtor") entered into an IT and Managed Services Agreement with
18 Siemens Medical Solutions USA, Inc. ("Siemens"). In connection with Cerner Corp.'s
19 acquisition of the health services business of Siemens effective February 2, 2015, Siemens
20 assigned the IT and Managed Services Agreement to Cerner HS. In the years since the execution
21 of the IT and Managed Services Agreement, the Debtor has entered into various additional
22 contracts, amendments, schedules and arrangement letters with Siemens and later Cerner
23 (collectively with the IT and Managed Services Agreement, these contracts, amendments,
24 schedules and arrangement letters are referred to as the "Agreement").
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1 6. Under the terms of the Agreement, the Debtor licensed from Cerner certain
2 software solutions necessary to the operations of the Debtor's hospital, including the processing
3 and storage of electronic medical records and medical billing. Through the Agreement, the
4 Debtor also purchased professional services, software support, managed services, hosting
5 services, transaction services, sub-licensed software licenses and equipment, all associated with
6 the healthcare information software licensed through the Agreement.
7

8 7. Since the Petition Date, the Debtor has continued to use Cerner's software, but has
9 not made any post-petition payments to Cerner. For the period from September 30, 2017 through
10 January 2, 2019, the Debtor owes Cerner the amount of \$1,502,997.19.

11 8. Cerner provided post-petition services to the Debtor that have benefited the Debtor.
12 As shown on the statement of account attached hereto as Exhibit A, for the period from the
13 Petition Date to July 20, 2018, the Debtor has incurred \$940,771.54 in amounts due to Cerner
14 under the Agreement. Cerner's records show that although the Debtor's hospital was not open
15 during this time, Cerner's systems were being accessed for purposes such as medical billing and
16 fulfilling medical record requests.
17

18 9. As of the July 20, 2018 filing of the Debtor's Motion for Authority to Enter Into a
19 Transaction Including Borrowing Funds, Sales of Personal Property and Providing Security,
20 Assumption and Assignment of Contracts and Leases and for Authority to Lease Real Property
21 Pursuant to 11 U.S.C. Sections 105, 362, 364, 365, 901 and 922 (the "Motion"), the Debtor knew
22 it intended to reopen its hospital. As shown on Exhibit A, the Debtor has incurred \$562,225.65
23 in amounts due to Cerner under the Agreement from the filing of the Motion through January 2,
24 2019.
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1 10. Cerner provided post-petition healthcare information software solutions to the
2 Debtor in the ordinary course of the Debtor's business pursuant to a contractual agreement with
3 the Debtor. Use of the software solutions helped to preserve the value of the Debtor's business
4 and provided a significant contribution to the Debtor's efforts to reopen its hospital and to
5 consummate the transaction with Adventist Health.

6 11. Although the Debtor has incurred an additional \$1,502,997.19 under the
7 Agreement since the filing of its bankruptcy case, Cerner is seeking the allowance and payment
8 of an administrative expense claim in the amount of just \$562,225.65, the amount incurred
9 under the Agreement to reopen and operate the Debtor's hospital.

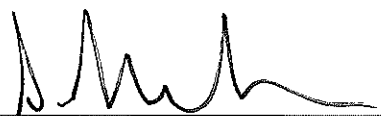
10 12. Cerner would also accept this amount as a cure for the assumption and assignment
11 of the Agreement (a discount of \$3,204,733.87), but the Debtor has chosen to instead reject the
12 Agreement.

13 13. Cerner has had discussions with representatives of the Debtor and Adventist
14 Health, who is managing the Debtor's hospital, regarding the Debtor's and Adventist Health's
15 failure to make any payments to Cerner post-petition, and in particular for the use of Cerner's
16 licensed systems to re-open and now operate the hospital. The Debtor and Adventist Health
17 have failed and refused to make any payments but they continue to use Cerner's systems.

18 14. Cerner reserves its rights as to all amounts due under the Agreement.

19 I, Sara Meinhard, affirm under the penalty of perjury that the foregoing is true and
20 correct.

21 Dated: January 10, 2019



22 Sara Meinhard
23 Assistant Secretary, Cerner Corporation
24 Assistant Secretary, Cerner Health Services, Inc.